

HOUSE No. 2760

The Commonwealth of Massachusetts

PRESENTED BY:

Michael S. Day and Rob Consalvo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act providing for settlements of tax liability.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michael S. Day</i>	<i>31st Middlesex</i>	<i>1/20/2023</i>
<i>Rob Consalvo</i>	<i>14th Suffolk</i>	<i>1/20/2023</i>

HOUSE No. 2760

By Representatives Day of Stoneham and Consalvo of Boston, a petition (accompanied by bill, House, No. 2760) of Michael S. Day and Rob Consalvo relative to providing for settlements of tax liability. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act providing for settlements of tax liability.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 62C of the General Laws is hereby amended by striking out section 37A and
2 inserting in place thereof the following section:--

3 Section 37A. (a)(1) The commissioner may enter into an agreement in writing with any
4 taxpayer, or duly authorized agent or representative of the taxpayer, relating to the liability of the
5 taxpayer in respect of any tax for any tax period ending prior to the date of the agreement.

6 (2) The agreement shall be final and conclusive and, except upon a showing of fraud or
7 mutual mistake of a material fact, the case shall not be reopened as to the matters agreed upon, or
8 the agreement modified, by any employee or agent of the commonwealth. The agreement shall
9 be in writing to include the names of all parties, the amount and type of tax, interest, penalties
10 and charges settled, and the amount actually paid in accordance with the terms of the settlement.

11 Any amount assessed that is not collected pursuant to the provisions of this section shall be
12 abated by the commissioner.

13 (3) Prior to making a settlement offer, a taxpayer must be in compliance with filing
14 requirements for all tax years. A taxpayer is “in compliance” when all income tax returns have
15 been filed, whether or not timely, or when, in the absence of a return, an assessment issued by
16 the department under its authority is considered correct and final.

17 (b) A compromise may be entered into if there is a doubt as to liability, doubt as to
18 collectability, or the possibility to promote effective tax administration. Doubt as to liability
19 exists where there is a genuine dispute as to the existence or amount of the correct tax liability
20 under the law. Doubt as to liability does not exist where the liability has been established by a
21 final court decision or judgment concerning the existence or amount of the liability. Doubt as to
22 collectability exists in any case where the taxpayer's assets and income are less than the full
23 amount of the liability. Effective tax administration is promoted where compelling public policy
24 or equity considerations provide a basis for compromising the liability, or where due to
25 exceptional circumstances, collection of the full liability would undermine public confidence that
26 the tax laws are being administered in a fair and equitable manner.

27 (c) The commissioner shall prescribe guidelines to determine whether the offer is
28 adequate and should be accepted to resolve a dispute.

29 (1) In prescribing guidelines, the commissioner may develop and publish its own
30 schedules of allowances designed to provide that taxpayers entering into a compromise have an
31 adequate means to provide for the taxpayer's (and his or her family's) health and welfare and/or
32 production of income, or the commissioner may rely on the existing standards used by the
33 Internal Revenue Service collection financial standards.

34 (2) The guidelines shall provide that the commissioner determine, on the basis of the
35 facts and circumstances of each taxpayer, whether the use of the schedules published under
36 subparagraph (A) is appropriate and shall not use the schedules to the extent such use would
37 result in the taxpayer not having adequate means to provide for basic living expenses.

38 (d) (1) The commissioner may require as a condition of compromising the liability a
39 period of up to 3-year future compliance period during which the taxpayer must file all tax
40 returns that are due and must pay all amounts that have been assessed. The taxpayer must pay the
41 amounts that have been assessed within 90 days of the date of the assessment unless
42 paragraph (2) of this subsection applies. This 3-year compliance period begins when the taxpayer
43 makes final payment of the amount offered.

44 (2) The taxpayer is not required to pay all amounts due within 90 days of the date they
45 are assessed if the taxpayer files an appeal within 90 days of the assessment date. A taxpayer
46 who files an appeal within 90 days of the assessment date must pay all amounts that are
47 determined to be due within 90 days after the taxpayer's appeal rights have been exhausted or
48 have expired and the liability has become final.

49 (e) (1) A "lump-sum offer" is an offer of payments to be made in 5 or fewer installments.

50 The submission of any lump-sum offer-in-compromise shall be accompanied by the
51 payment of 10 percent of the amount of such offer.

52 (2) A periodic payment offer is an offer of payments to be made in 36 or fewer
53 installments. The submission of any periodic payment offer-in-compromise shall be
54 accompanied by the payment of the amount of the first proposed installment. Taxpayers who fail

55 to make the promised periodic payments after an offer-in-compromise is accepted shall be
56 notified of the nonpayment and given a reasonable time to bring the account up to date.

57 (f) The commissioner shall not reject an offer-in-compromise solely on the basis of the
58 amount of the offer.

59 (g) Any tax liability settlement under this section which proposes to accept an amount
60 which is fifty thousand or more dollars less than the full amount owed by the taxpayer shall be
61 submitted to the Attorney General for review.

62 (h) The commissioner shall establish procedures:

63 (1) that require presentation of a counteroffer or a written rejection of the offer by the
64 commissioner if the amount offered by the taxpayer in an offer, be it a lump sum or periodic
65 payments, is not accepted by the commissioner;

66 (2) for an independent administrative review of any written rejection of a proposed offer
67 or installment agreement made by a taxpayer under this section before the rejection is
68 communicated to the taxpayer;

69 (3) that allow a taxpayer to appeal any rejection of the offer to the Office of Appeals; and

70 (4) that provide for notification to the taxpayer when an offer has been accepted, and
71 issuance of certificates of release of any liens related to the liability which is the subject of the
72 compromise.